

7 Official Opinions of the Compliance Board 269 (2011)

“Meeting”

- Determined not to be a meeting – Gathering of fewer than a quorum when quorum not present**
- Determined to be a meeting – Social gathering and chance encounter exception – not applicable when used to discuss public business**

Administrative Function – Within Exclusion – Assignment of members to attend another entity’s event

July 26, 2011

Jason Keirn
Complainant

Mayor and Town Council of Brentwood
Respondent

We have considered the complaint of Jason Keirn (“Complainant”) that the Town Council of Brentwood (the “Town”) violated the Open Meetings Act (the “Act”) by holding a meeting without giving public notice or otherwise complying with the Act. We conclude that the Act did not apply to the discussion in question and therefore find no violation.

I

Discussion

Complainant states that he observed three members of the Town Council – the Mayor and two council members - meeting at a Dunkin Donuts in Hyattsville. He states that he does not know what they discussed.

The Town responds that the Town Council is comprised of five members, including the Mayor; that the Mayor and Council Member Harrison met at Dunkin Donuts for coffee; that they discussed attending the Mt. Rainier Day Celebration that day and planning for the Town’s own celebration event; that Council Member Brooks then “came in unexpectedly”; that the three members talked about the Mt. Rainier event; and that the Mayor asked the other two to represent the Town at the Mt. Rainier event until the Mayor could get there. The Mayor then left. The Town asserts that the event was a “social gathering” and “chance encounter” during which no public business was discussed and

that the Act therefore did not apply. We begin, however, with whether the gathering was a “meeting” subject to the Act.

The Act requires a public body to hold its “meetings” in open session, unless the Act expressly permits otherwise. Annotated Code of Maryland, State Government Article (“SG”), § 10-505. A “meeting” for purposes of the Act occurs when a quorum of the public body’s members convenes to consider or transact public business. SG § 10-502(g). The Act thus does not apply when fewer than a quorum are present. A quorum is a “majority of the members,” unless otherwise provided by law. SG § 10-502(k). A quorum of Brentwood’s five-member Town Council is at least three members. The conversation between the Mayor and Council Member Harrison about the Town’s own Celebration Day involved public business, but it did not occur in the presence of a quorum, and so the Act did not apply.¹ The discussion among the three members after Council Member Brooks arrived did occur in the presence of a quorum, and so we turn to the Town’s contention that the discussion occurred during a “chance encounter” or “social gathering” and was thereby exempt from the Act.

The Act does not apply to “a chance encounter, social gathering, or other occasion that is not intended to circumvent [the Act].” SG § 10-503(a). That exclusion does not confer on a public body a blanket permission to discuss public business at such gatherings. Instead, the exclusion evaporates, and the Act applies, when an event that begins as a chance encounter or social gathering is then used to convey information that constitutes public business within the Act. *See, e.g.* 3 *OMCB Opinions* 30,34 (2001) (finding that the Act applied when public business within the Act was conducted by an “accidental quorum” created by a member’s unexpected appearance); 3 *OMCB Opinions* 78, 83 (2001) (finding that the Act applied to a social gathering where a nonvoting member told the members how he would present an agenda item at the board’s meeting later that evening); 2 *OMCB Opinions* 74, 76 (1999) (cautioning that a public body meeting socially “must refrain from conducting public business during that time”). We have thus found that the Act will apply to a meeting originating by chance or for purely social reasons when the discussion turns to public business within the Act.

Public business falls within the Act when the public body is exercising an advisory, legislative, or quasi-legislative function. *See* SG §§ 10-502(b) and

¹ Complainant later referred us to a video of a town meeting during which the Mayor referred to visiting a certain site that day with one other council member. Again, no quorum was created.

10-503. As relevant here, the Act does not apply when the public body is exercising the administrative function. *Id.*² A public body's discussion of such matters as the committee assignments of its own members is generally administrative in nature when those assignments are made by the public body itself. *See 7 OMCB Opinions* 142, 144, n.1 (2011). For example, we have found that a public body's discussion about which member should attend a conference fell within the administrative function exclusion because it concerned a "housekeeping matter" of that body and did not implicate a policy-making or other function within the Act. *3 OMCB Opinions* 39, 43 (2000).

According to the Town, the members discussed two topics: first, Mt. Rainier's celebration day, and, second, the Mayor's request that the other members represent the Town at that event until he arrived. The first topic perhaps involved Mt. Rainier's business; it apparently did not involve the Town's business. The Mayor's request did involve the Town's business. That topic, however, was analogous to a discussion of committee assignments or selection of conference attendees and was thus administrative in nature. We find that the Act did not apply to either topic.

II

Conclusion

We conclude that no violation occurred because the Act did not apply to the event in question.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

² The other express exclusions relate generally to the grant of licenses or permits and the performance of judicial or quasi-judicial functions, *see* SG § 10-503; they do not apply here.